101ST CONGRESS
2d Session

SENATE

REPORT
101-518

LEGISLATIVE LINE ITEM VETO SEPARATE ENROLLMENT AUTHORITY ACT

REPORT

OF THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

TO ACCOMPANY

S. 3181

together with

ADDITIONAL AND MINORITY VIEWS

TO CREATE LEGISLATIVE LINE ITEM VETO SEPARATE ENROLLMENT AUTHORITY

OCTOBER 10 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

49-010 WASHINGTON : 1990

S253-10

COMMITTEE ON THE BUDGET

JIM SASSER, Tennessee, *Chairman*

ERNEST F. HOLLINGS, South Carolina
J. BENNETT JOHNSTON, Louisiana
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
FRANK R. LAUTENBERG, New Jersey
PAUL SIMON, Illinois
TERRY SANFORD, North Carolina
TIMOTHY WIRTH, Colorado
WYCHE FOWLER, JR., Georgia
KENT CONRAD, North Dakota
CHRISTOPHER J. DODD, Connecticut
CHARLES S. ROBB, Virginia

PETE V. DOMENICI, New Mexico
WILLIAM L. ARMSTRONG, Colorado
RUDY BOSCHWITZ, Minnesota
STEVEN D. SYMMS, Idaho
CHARLES E. GRASSLEY, Iowa
ROBERT W. KASTEN, JR., Wisconsin
DON NICKLES, Oklahoma
WARREN RUDMAN, New Hampshire
PHIL GRAMM, Texas
CHRISTOPHER BOND, Missouri

JOHN L. HILLEY, *Staff Director*
AGNES J. BUNDY, *Counsel*
G. WILLIAM HOAGLAND, *Minority Staff Director*

CONTENTS

		Page
I.	Summary of the legislation	1
II.	Need for legislation	2
III.	Legislative history	3
IV.	How the proposal works	4
V.	Rollcall vote in committee	5
VI.	Joint referral under the standing order	5
VII.	Regulatory impact	5
VIII.	Cost estimate	6
IX.	Additional views of Senator Hollings	7
X.	Minority views of Senator Sasser	19
XI.	Changes in existing law	19

101ST CONGRESS
2d Session

SENATE

REPORT
101-518

LEGISLATIVE LINE ITEM VETO SEPARATE ENROLLMENT AUTHORITY ACT

OCTOBER 10 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. HOLLINGS, from the Committee on the Budget, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 3181]

I. SUMMARY OF THE LEGISLATION

On a motion by Senator Ernest F. Hollings, by a vote of 13 to 6, the Committee reported an original bill, the "Legislative Line Item Veto Separate Enrollment Authority Act." This amendment to the Congressional Budget Act provides that each "item" in an appropriation bill shall be enrolled as a separate bill and sent to the President for his approval. Consequently, each "item" of an appropriations bill would be subject to veto or approval just like any other bill, and the override provisions found in Article I of the Constitution[1] would apply in the case of a veto.

[1] Section 7. Clause 1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Clause 2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approves he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays expected) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return in which Case it shall not be a Law.

Continued

II. NEED FOR LEGISLATION

This legislation offers an important opportunity to revise the budget process by enabling the President to control wasteful and unnecessary appropriations and thereby reduce the Federal deficit. Under current law, a specific appropriations item can be cancelled only through a cumbersome rescission process that has proved to be largely ineffective. Indeed, the President's proposed rescission can be thwarted simply by congressional inaction. In fact a substantial majority of Presidential rescissions submitted since the present law was enacted in 1974 have never been acted upon.[2]

This legislation would rectify this problem by permitting the President, in effect, to rescind appropriations items on an "up front" basis by being able to approve or veto specific items in an appropriations bill. This simple but important change in the law will permit the President more effective control of various components of the Federal budget.

III. LEGISLATIVE HISTORY

Legislative line item veto is not a new idea. Indeed until the Congressional Budget Act of 1974 [3] was enacted, the President had broad impoundment authority. This power was sometimes used by the President to block appropriations deemed contrary to his budget policies.[4]

Clause 3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives my be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitation prescribed in the Case of a Bill. "Constitution of the United States of America"

[2] Rescission of Budget Authority, Pub.L. 93-344, Title X, § 1012, July 12, 1974, 88 Stat. 333. (codified as amended at 2 U.S.C. § 683).

[3] Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (July 12, 1974) (codified as amended at 2 U.S.C. §§ 601-688) [hereinafter the Congressional Budget Act].

[4] In President Richard Nixon's Annual Budget Message to the Congress on January 29, 1971, he discussed reforming the budget process:

"Reform of the budget process is long overdue. Fifty years have passed since the Federal budget system currently in use was adopted. The system was a major step forward in 1921. Because of congressional inaction, it has become a travesty a half century later.

"Enactment of appropriations 6 months or more after the start of the fiscal year they are supposed to cover is evidence of a major weakness. I have sent two budgets to the Congress. In each, I have had to formulate budget proposals for the year ahead without knowing what the Congress would provide in its action on the prior year's budget, which was transmitted 11 months earlier. Even now, as this message is being written, action on last year's appropriations request for one department has not been completed.

"I have, therefore, had to act on parts of the budget without knowing the totals that would result. This is an intolerable situation, but one that the Congress seems to accept as the normal way of doing business. It completes action on appropriation bills over a 10- to 12-month period without any goal or determination of the total expenditures that will result after the last bill is passed.

"Excess in the number and detail of appropriations often diverts attention to minutiae. It also impairs the ability of agency heads to manage their agencies responsibly and economically.

"The budget is our principal instrument for coordinated management of Federal programs and finances. Close cooperation between the executive and legislative branches is needed now to make the budget an efficient and effective instrument for this purpose. Therefore we must seek a more rational, orderly budget process. The people deserve one, and our Government, the largest fiscal unit in the free world, requires it.

"Furthermore, Federal credit programs which the Congress has placed outside the budget-guaranteed and insured loans, or loans by federally sponsored enterprises—escape regular review by either the executive or the legislative branch. The evaluation of these extra budgetary programs has not been fully consistent with budget items. Their effects on fiscal policy have not been rigorously included in the overall budget process. And their effects on overall debt manage-

Continued

Furthermore, line item veto is not an untested idea. Forty-three states already give a similar power to their Governors, who generally regard it as a constructive tool of budget control at the State level.

United States Presidents since Ulysses S. Grant have sought the line item veto, but until now Congress has refused to cede the power of the purse and with considerable justification, because earlier Congresses seldom adopted budgets that were unbalanced. Deficits have increased in earlier decades, during wartime or recessions, yet Congress always managed to bring these deficits back to balance. However, the budget has not been balanced or shown a surplus since 1974.

Twelve measures introduced in the 100th Congress would grant the President the authority to veto a part, rather than all of an appropriations bill. In the 101st Congress, hearings on the legislative line item veto were held by the Senate Judiciary Subcommittee on the Constitution on April 11, 1989. On June 8, 1989, the Constitution Subcommittee voted to report without recommendation, two measures, S.J. Res. 14 and S.J. Res. 23, to the full committee without recommendation. On April 26, 1990, the Committee approved S.J. Res. 14 and S.J. Res. 23. Tables I and II note recent Congressional actions on legislative line item veto and other related measures.[5]

TABLE 1.—ITEM VETO PROPOSALS INTRODUCED IN THE 101ST CONGRESS

Measure	Sponsor	Date introduced	Committee(s) of referral
H.R. 61	Archer	January 3, 1989	Judiciary
H.R. 62 [1]	Archer	do	Do.
H.R. 1261 [1]	Penny	March 2, 1989	Do.
H.R. 1262	Penny	do	Rules; Government Operations.
H.R. 2936	Upton	do	Do.
H.J. Res. 12 [1]	Bennett	January 3, 1989	Judiciary
H.J. Res. 29 [1]	Solomon	do	Do.
H.J. Res. 50 [1]	Emerson	do	Do.
H.J. Res. 110 [1]	Thomas	do	Do.
H.J. Res. 181 [1]	Stump	March 8, 1989	Do.
H.J. Res. 313 [1]	Jerry Lewis	June 22, 1989	Do.
H.J. Res. 384	Gillmor	August 2, 1989	Do.
H.J. Res. 422 [1]	Poshard	October 18, 1989	Do.
S. 21	Roth	January 25, 1989	Budget; Government Affairs.
S. 33	Humphrey	do	Do.
S. 354	Exon	do	Do.
S.J. Res. 14 [1]	Thurmond	do	Judiciary.
S.J. Res. 23 [1]	Dixon	do	Do.
S.J. Res. 31 [1]	Dixon	do	Do.
H. Res. 297		do	Do.

[1] Indicates that the measure is a proposal for a constitutional amendment.

ment are not coordinated well with the overall public debt policy. For these reasons, I will propose legislation to enable these credit programs to be reviewed and coordinated along with other Federal programs." *Public Papers of the Presidents of the United States—Richard Nixon: Containing the Public Messages, Speeches, and Statements of the President—1971*, The United States Government Printing Office, p. 87 (1971).

[5] "Budget Process Reform Legislation Introduced in the 101st Congress: Selected Listing", CRS Report for Congress, *James* v. *Saturno*, December 22, 1989.

TABLE II.—SELECTED VOTES ON OR RELATING TO MEASURES TO PROVIDE ITEM VETO OR ENHANCED RESCISSION AUTHORITY, 98TH–101TH CONGRESSES

Congress	Bill number	Sponsor	Date/Place	Vote	Type of proposal
101st	Amendment No. 1955 to S. 341.	McCain	June 6, 1990 Senate.	43–50 (Waiver)	Enhanced. Rescission.
101st	Amendment No. 1092 to H.R. 3015.	Coats et al.	November 9, 1989 Senate.	40–51 (Waiver)	Enhanced. Rescission.
100th	Amendment No. 650 to H.J. Res. 324.	Evans	July 31, 1987 Senate.	41–48	Separate. Enrollment.
100th	Amendment No. 1294 to H.J. Res. 395.	Evans	December 11, 1987 Senate.	44–51	Separate. Enrollment.
99th	S. 43	Mattingly et al.	July 18, 1985 Senate.	57–42 (Cloture)	Item Veto.
99th	S. 43	Mattingly et al.	July 24, 1985 Senate.	58–40 (Cloture)	Item Veto.
99th	Amendment No. 2853 to S. 2706.	Quayle/Exon	September 19, 1986 Senate.	34–62 (Waiver)	Enhanced. Rescission.
98th	Amendment to H.R. 2165.	Gramm	January 24, 1984 House.	131–245	Item Veto.
98th	Amendment to H.R. 2878.	Gingrich	January 31, 1984 House.	144–248	Item Veto.
98th	Amendment to H.R. 2708.	Gekas	February 23, 1984 House.	145–243	Separate Enrollment (variation).
98th	Amendment No. 2625 to H.J. Res. 308.	Armstrong	November 16, 1983 Senate.	49–46 (to table)	Enhanced Rescission.
98th	Amendment No. 3045 to H.R. 2163.	Mattingly	May 3, 1984 Senate.	56–34 (out of Order).	Item Veto.

One measure introduced in the 101st Congress similar to this legislation has been referred to the Senate Committee on Rules and Administration. Senator Humphrey offered S. 3 in an attempt to achieve results similar to granting an item veto authority by requiring that each item in an appropriations measure be separately enrolled.

In addition, Senator Roth offered S. 21, a proposal to grant the President item veto authority rather than enhanced rescission power. S. 21 amends Title X of the Congressional Budget and Impoundment Control Act. Still another measure offered by Congressman Campbell, H.R. 297, asserts that the Constitution already grants the President item veto power, and ecnourages him to exercise this power.

In summary, there have been numerous legislative line item veto proposals entertained in the last several Congresses. Such proposals will continue to attract Congressional attention given the desire to exercise greater fiscal control over ever-increasing budget deficits.

IV. HOW THE PROPOSAL WORKS

This legislation provides that each "item" of any appropriation bill shall be enrolled as a separate bill for presentation to the

President. The President would then be able to sign or veto separate pieces of legislation. Any vetoed "item" would have to be returned, along with the President's objections, to the House in which it originated. As mandated in the Constitution, any vetoed measure could be overridden by a two-thirds vote of each House.

This legislation defines "item" as any and all paragraphs and numbered sections contained in appropriation bills. The legislation contains a "sunset" provision under which the line item veto authority will expire in two years unless specifically renewed by Congress.

This last provision is important. The automatic sunset provision gives an insurance policy against potential abuses in the use of the line item veto. It may be invoked if circumstances arise that make it clear that it is not providing a reasonable restraint on excessive federal spending.

V. ROLL-CALL VOTE IN COMMITTEE

Senator Hollings offered an original bill to amend the Congressional Budget Act that would create a legislative line item veto separate enrollment authority.

The Committee agreed to the Hollings motion to report the Legislative Line Item Veto Separate Enrollment Authority Act by a vote of 13 Yeas to 6 Nays.

YEAS	NAYS
Mr. Hollings	Mr. Sasser
Mr. Exon	Mr. Riegle*
Mr. Simon	Mr. Lautenberg
Mr. Conrad	Mr. Sanford
Mr. Robb	Mr. Wirth
Mr. Domenici*	Mr. Rudman*
Mr. Armstrong	
Mr. Boschwitz	
Mr. Symms	
Mr. Grassley	
Mr. Kasten	
Mr. Nickles	
Mr. Bond	

*This vote was made by proxy.

VI. JOINT REFERRAL UNDER THE STANDING ORDER

The Committee on the Budget has jurisdiction over the matter in the Legislative Line Item Veto Separate Enrollment Authority Act by virtue of the standing order on the referral of budget-process legislation into which the Senate entered on August 4, 1977. Upon the reporting of the Act, the Presiding Officer will refer it to the Committee on Governmental Affairs pursuant to the standing order, with instructions that the Committee on Governmental Affairs shall have 30 days to report or be discharged.

VII. REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the

regulatory impact which would be incurred in carrying out the bill." [6] The enactment of this legislation would not have significant regulatory impact.

VIII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 22, 1990.

Hon. JIM SASSER,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed a bill that would provide for a legislative line item veto through separate enrollment authority, as ordered reported by the Senate Committee on the Budget, July 25, 1990. We estimate that the bill would result in no significant cost to the federal government and in no cost to state and local governments.

The bill would require the Secretary of the Senate and the Clerk of the House to direct the enrolling clerk of each body to enroll each item of any appropriation bill or resolution as a separate bill or resolution. This would allow the President to sign or veto each appropriation item as a separate act. Under current practice, the President can sign or veto an entire appropriation bill, but cannot deal separately with individual items in such a bill. The legislation would apply to bills and joint resolutions agreed to by the Congress during the next two calendar years.

We do not expect the government to incur any significant increased cost from enrolling appropriation bills as specified in this legislation. It is possible that the availability of the line item veto could result in some savings starting in fiscal year 1991, but there is no basis for predicting how much the President would use it or how often the Congress would override such vetoes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is James Hearn, who can be reached at 226-2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

---

[6] Standing Rules of the Senate, rule XXVI(11)(b)(1) (1990).

IX. ADDITIONAL VIEWS

Additional Views of Senator Hollings

On July 25th, 1990, the Committee voted to report favorably my statutory line-item veto proposal. Currently, 43 states have, in one form or another, a line-item veto which allows the Chief Executive to limit legislative spending. As a former Governor who inherited a budget deficit in a poor state, I can testify that a line-item veto is invaluable in imposing fiscal restraint.

The fiscal problems confronting this country are well known, and are, in fact, surging, not receding. We face actual deficits in excess of $400 billion. For years, we have been toying with freezes, asset sales and sham summits, but the deficit and debt continue to grow. The taxpayer, as well as the Congress, have grown weary of the smoke and mirrors, and it is time to enact a serious deficit reduction package. If ever there was a problem that needed to be attacked from every possible angle, it is this deficit. The President has said he will take heat and make the tough decisions with a line-item veto. Let's hold him to that commitment and make the line-item veto part of a deficit reduction measure.

The bill approved by the Committee is a statutory, separate enrollment line-item veto with a two year sunset provision that is identical to a bill considered by the Senate in the 99th Congress. It provides that each "item" shall be enrolled as a separate bill and sent to the President for his approval. Therefore, each "item" of an appropriations bill would be subject to veto or approval just like any other bill, and the override provisions found in Article I of the Constitution would apply in the case of a veto.

"Item" is defined as "any numbered section and any unnumbered paragraph" of an appropriations bill. The Enrolling Check would merely break an appropriations bill down into its component parts and send each separately enrolled provision to the President.

The bill also contains a two year sunset provision. This will allow for a reasonable testing period and require an evaluation of how well the line-item veto has worked. I have no question but that it will be demonstrated to be a modest, but effective, method of restraining fiscal profligacy.

Finally, I would like to make a part of the record a history of the line-item veto found in the June-July issue of Congressional Digest. It provides a thorough discussion of the origins and development of the concept at the federal level.

Ernest F. Hollings.

LINE ITEM VETO

*He Who Decides a Case Without Hearing the Other Side * * * Tho He Decide Justly, Cannot Be Considered Just*—Seneca.

FOREWORD

The United States Constitution provides that the President may sign a measure into law or veto it in its entirety. The proposed line item veto would grant authority to the President to veto specific items within appropriations bills while approving the remainder. With this alternative, the President could remove one or more features of a particular bill.

The question of whether or not the President should be given such power has been the subject of a longstanding controversy. The line item veto first appeared in the Constitution of the Confederate States in 1861. Later, Ulysses S. Grant became the first President to call for such an expansion of the veto. Since then, hundreds of line item veto measures have been introduced in Congress, but none has been approved.

Discussion of the line item veto has persisted, especially in light of the mounting concern over the size of the Federal deficit. Along with proposals to balance the Federal budget, the line item veto has been promoted by many as an essential means of bringing Federal spending under control.

The appropriations process begins in the House. Each year, the 13 House appropriations subcommittees prepare spending bills to meet the budget needs of the agencies within their jurisdictions. These include "Defense," "Interior," "Labor, Health and Human Services and Education," and other broad areas. Appropriations bills start with the budget requests submitted to the Congress by the agencies themselves. The subcommittees review these requests, assess the programs involved and report their bills with any recommended changes to the full Appropriations Committee, which then reports the bills to the full House. Following House passage, each appropriations bill is referred to the Senate, where the process of committee review and floor action is repealed.

If action has not been completed on one or more regular appropriations bills by the start of the fiscal year, Congress may pass a "continuing resolution" to provide temporary budget authority for the affected agencies. Congress can also pass a supplemental appropriations bill at any time to provide budget authority beyond the original estimates for certain programs.

More and more, Congress has been criticized for formulating omnibus appropriations measures that cover wide areas and comprise much detail. In addition, the appropriations "rider" (a provision amending existing law) in-

creasingly has become a device for changing Federal programs through the appropriations process.

The proponents of the line item veto, therefore, argue that the President's authority has been thwarted by these practices, and that expanded veto power would help to keep Congress in check. They further contend that the line item veto is needed to help reduce Federal spending and lower the deficit.

Opponents argue against the line item veto on the grounds that it would lessen congressional responsibility for making budgetary decisions and heighten the President's legislative role—leading to an unwarranted expansion of the power of the Executive over Congress. They also express concern that the line item veto in effect would give the President the ability to punish or coerce individual Members into supporting his policies, and that this might damage a Member's ability to properly represent the interests of his or her constituents in matters of local interest.

The two proposals reported by the Senate Judiciary Committee call for a constitutional amendment to grant line item veto authority to the President. Thus, either would require passage by two-thirds of both the House Senate as well as ratification by three-fourths of the States.

EVOLUTION OF FEDERAL BUDGET POLICY

The current budget process has evolved from a set of informal procedures during the early years of the Republic into the complex system in use today. The addition of presidential line item veto authority would constitute still another significant change in our Federal financial policy.

Early Federal Debt Policy

A major controversy in the First Congress was over whether the new U.S. Government should assume the debts contracted by the States during the War of Independence. The State debts were assumed. Together with other Federal debts owed to both foreign and domestic lenders, they comprised a total of under $100 million.

The banking system and the amount of Federal revenue to be raised were principal policy issues of the pre-Civil War era. The main source of Federal revenue was from import duties.

Income Tax and The Depression

The national debt had remained at some $1 billion from the turn of the century until World War I. By 1919, wartime expenditures has raised it to $25 billion. The adoption in 1913 of an amendment to the Constitution authorizing the income tax opened a new source of Federal revenue.

The Bueau of the Budget was created by an act of Congress in 1921. It was located in the Treasury Department,

but under the immediate direction of the President. The Act established the procedure for creating a budget consisting of revenue and expenditure esimates, to be submitted annually by the President to the Congress.

The national debt was reduced by some $1 billion annually in the 1920s until 1930 when it became $16 billion. International and national financial policy was drastically altered by the global depression. Central to the controversies during the Roosevelt era were the New Deal "pump-priming" programs intended to improve the economy. The Natonal debt rose to $51 billion by 1940.

President Roosevelt transferred the Bureau of the Budget from the Treasury to the White House in 1939. Federal finance had, in effect, become an instrument of policy beyond administering governmental expenses.

Post World War II

By 1946, war expenditures had forced the Federal debt to $271 billion.

Under a Nixon Administration reorganization plan, the Bureau of the Budget was designated the Office of Management and Budget in 1970. The expansion of the Federal Government and strains between a Democratic-controlled Congress and the Republican Nixon Administration led to the enactment of legislation creating the present budget process. By the early 1980s, the expenditures of the Vietnam war, combined with those of the "Great Society" programs, established an annual level of expenditures over $200 billion.

The 1974 Budget Act

The purpose of the Congressional Budget and Impoundment Act of 1974 was "to provided Congress with the procedures, analytical capabiliies and the authority to make the Federal budget a more useful tool of national economic policy." The Act provided for congressional overview of the Federal budget and curtailed the power of the President to impound or rescind funds for Federal programs. Under the Act the Congress focuses on overall budget totals and relates individual appropriations actions to one another within a general set of spending priorities.

THE PRESIDENTIAL VETO

The following language from the Constitution of the United States of America grants veto power to the President.

The Constitution of the United States Article I, Section 7

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections to that House in which it shall have origi-

nated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively.

"If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

THE VETO RECORD OF U.S. PRESIDENTS, 1969–1988

[Number of Vetoes]

President	Regular	Pocket	Total	Number overridden
Nixon, R.	26	17	43	7
Ford, G.	48	18	66	12
Carter, J.	13	18	31	2
Reagan, R.	39	39	78	9
Total	126	92	218	30

Source: Congressional Research Service, Library of Congress.

THE BUDGET PROCESS AND THE PRESIDENT

The following is excerpted from an April 1990 report of the Library of Congress' Congressional Research Service on "The President and the Budget Process."

Summary

Conflicting budget priorities, along with concern over the size of the Federal deficit, have accentuated the institutional tensions between the Executive and Legislative branches inherent in the Federal budget process.

Congress exercises its "power of the purse" by enacting appropriations measures, but the Preisent has broad authority as chief executive in the implementation stage of the budget process. It is at this stage that the budget authority provided by Congress is actually spent by the Federal Government.

Impoundment, whereby the President withholds or delays the spending of appropriated funds, provides one important mechanism for budgetary control during the execution stage, but Congress retains oversight responsibilities at this stage as well.

The Impoundment Control Act of 1974 established two categories of impoundments: deferrals, or temporary delays in funding availability; and rescissions, or permanent cancellation of the designated budget authority.

The 1974 law also stipulated different procedures for congressional review and control of the two types of impoundment. With a rescission, the funds must be made available for obligation unless both Houses of Congress take action to approve the rescission request (forwarded in a message from the President) within 45 days of "continuous session."

Consideration of impoundment reform has become increasingly joined with that of an item veto for the President.

The Constitution provides that the President may sign a bill into law or veto the measure in its entirety. Depending on specific provisions, rescission may be viewed as approaching a functional equivalence with an item veto: the President identifies certain items in an appropriations law for possible elimination by sending an impoundment message to Congress.

Background and Analysis

The recent report of the National Economic Commission, among other commentaries, has suggested that the "balance of power on budget issues has swung too far from the Executive toward the Legislative branch."

Debate about the appropriate relationship between the branches in the Federal budget process seems endemic, given the constitutional necessity of shared power in this sphere.

Under the Constitution, Congress possesses the "power of the purse" ("No money shall be drawn from the Treasury but in consequence of appropriations made by law"), but the President enjoys broad authority as the chief executive who "shall take care that the laws be faithfully executed."

Federal budget documents refer to three main stages in the budget process: (1) executive fromulation and transmittal of the President's budget recommendations; (2) congressional action and (3) budget execution and control.

Budget execution involves the actual spending of funds as appropriations laws and implemented. Impoundment for funds by the President represents an important component in budget execution.

History of Impoundment

Impoundment of Federal funds refers to Executive action to withhold or delay the spending of appropriated funds.

A variety of occurrences come under the impoundment rubric.

One useful distinction among impoundment actions, which received statutory recognition in the 1974 Impoundment Control Act, focuses on duration, whether the President's intent is permanent cancellation of the funds in question (rescission) or merely a temporary delay in availability (deferral).

Another useful contrast distinguishes impoundment for routine administrative reasons from impoundment for deliberate policy motives.

Virtually all Presidents have impounded funds in a routine manner as an exercise of Executive discretion to accomplish efficiency in management. The creation of budgetary reserves as a part of the apportionment process required by the Antideficiency Acts provided formal structure for such routine impoundments, which originated with an administrative regulation issued in 1921 by the Bureau of the Budget, and then received a statutory base in 1950. Impoundments for policy reasons, whether short-term or permanent, have proved far more controversial.

In the 1950s and 1960s, disputes over the impoundment authority resulted from the refusal of successive Presidents to fund certain weapons systems to the full extent authorized by Congress.

These confrontations between the President and Congress revolved around the constitutional role of Commander-in-Chief and tender to focus on relatively narrow issues of weapons procurement. President Johnson made broader use of his power to impound by ordering the deferral of billions of dollars of spending during the Vietnam war in an effort to restrain inflationary pressure in the economy. While some of these impoundment actions before the time of President Nixon were motivated by policy concerns, they typically involved temporary spending delays, with the President acting in consultation with congressional leaders, so that a protracted conformation between the branches was avoided.

Conflict over the use of impoundments greatly increased during the Nixon Administration, and eventually involved the courts as well as Congress and the President. In the 92nd and 93rd Congresses (1971–1974), the confrontation intensified as the President sought to employ the tool of impoundment to reorder national priorities and alter programs previously approved by Congress.

Following President Nixon's reelection in 1972, the Administration announced major new impoundment actions, affecting a variety of domestic programs.

For example, a moratorium was imposed on subsidized housing programs, community development activities were suspended and disaster assistance was reduced. Several farm programs were likewise targeted for elimination.

Perhaps the most controversial of the Nixon impoundments involved the Clear Water Act funds. Court challenges eventually reached the Supreme Court, which in early 1975 decided *Train* v. *City of New York*, on narrower grounds that the extent of the president's impoundment authority.

During these impoundment conflicts of the Nixon years, Congress responded not only with ad hoc efforts to restore individual programs, but also with gradually more restrictive appropriations language. Arguably, the most authoritative response was the enactment of the Congressional Budget and Impoundment Control Act of 1974 (ICA).

In order to effect a needed compromise in comference, the ICA differentiated two categories of impoundments: deferrals, or temporary delays in funding availability; and rescissions, or permanent cancellations of designated budget authority.

The 1974 law also required the President to inform Congress of all proposed rescissions and deferrals and to submit specified information regarding each action.

The ICA further required the Comptroller General to oversee Executive compliance with the law and to notify Congress if the President failed to report an impoundment or imporperly classified an action. Before 1974, the "rescission" and "deferral" terms did not appear central to the impoundment debate.

While the accumulation of budgetary reserves under the Antideficiency Act provided an antecedent to deferrals, the earlier laws limited deferrals to routine administrative functions.

Congressional Review of Rescissions

In the case of a rescission, the ICA provided that the funds must be made available for obligation unless both Houses of Congress take action to approve the rescission request with 45 days of "continuous session" (recesses of more than three days not counted).

In practice, this usually means that funds proposed for rescission not approved by Congress must be made available for obligation after about 60 calendar days, although the period can extend to 75 days or longer.

Congress may approve all or only a portion of the funds requested for rescission. Congress may also choose after the 45-day period to rescind funds previously requested for rescission by the President.

It is also possible for Congress to rescind funds never proposed for rescission by the President, but such action is not subject to the ICA procedures. The ICA makes no mention of procedures for congressional disapproval of a rescission request during the 45-day period. However, some ad-

ministrations have voluntarily followed a policy of releasing funds before the expiration of the review period, if either the House or the Senate authoritatively indicates that it does not intend to approve the rescission.

In the fall of 1987, as a component of legislation to raise the limit on the public debt (P.L. 100–119), Congress enacted several budget process reforms. Section 207 involved the rescission authority of the President. It provides a statutory prohibition against the practice, sometimes used by Presidents when Congress failed to act on a rescission proposal within the allotted period, of resubmitting as new rescission proposal covering identical or very similar matter.

By using such resubmissions repeatedly, with accompanying delays of 45 days or more, the President might continue to tie up funds even though Congress, by its inaction, had already rejected virtually the same proposal. The prohibition against such seriatim rescission proposals (contained in the 1987 law) applies for the duration of the appropriation, so that it may remain in effect for two or more fiscal years.

Reviews of Deferrals

The original provisions of Title X allowed a deferral to continue in effect for the period proposed by the President (not to extend beyond the end of the fiscal year so as to become a de facto rescission), unless either the House or the Senate took action to disapprove it. This procedure, known as a one-House legislative veto, was invalidated by the 1983 Supreme Court decision in *I.N.S.* v. *Chadha.*

Initially, however, the impact of the 1983 decision on impoundment control appeared modest. For one thing, Congress had previously adopted the practice of rejecting deferrals through language in appropriation bills, subject to the full legislative process, rather than by one-House resolutions.

Another factor facilitating accommodation between Congress and the President was the restraint exercised by the Office of Mangement and Budget in the initial aftermath of the *Chadha* decision. However, the President's budget for Fiscal Year 1987, submitted early in 1986, proposed substantial amounts for deferral, especially targeting housing programs.

The National League of Cities, joined by several other organizations and four Members of Congress, challenged the legality of such "policy" deferrals (as distinguished from deferrals for routine administrative purposes previously authorized by the Antideficiency Act).

In May of 1986, a Federal district court ruled that the President's deferral authority under the ICA was no longer available, since it was inseverable from the one-House veto provision in the law, previously held unconstitutional by the Supreme Court; in January of 1987, the decision was affirmed on appeal (*City of New Haven* v. *United States*).

Section 206 of the Balanced Budget Reaffirmation Act of 1987 (P.L. 100-199) served to codify the Appeals Court decision in the *New Haven* case. The provisions in the ICA as amended no longer sanction policy deferrals.

Rather, deferrals are now permissible only for contingencies, for efficiency or as specifically provided for by law. Section 206 also reaffirmed certain provisions of the 1974 law relating to enforcement responsibilities of the Comptroller General, who is empowered to sue the Executive for violations of the ICA. Early in 1990, the use of deferrals again engendered controversy when the President submitted to Congress an impoundment message covering 19 deferrals, amounting to over $2.19 billion, in the DOD budget for FY 1990. The justification for each deferral cited "changes in requirements in view of promsing developments in the Soviet Union and Eastern Europe." Most deferrals involved congressional "add ons" to the Administration's budget request; the President favored the transfer of funds being deferred to other accounts.

After reviewing the deferral actions, GAO reported to Congress March 6, 1990, that 17 of the 19 deferrals (involving almost $1.77 billion) were made for policy reasons and were not authorized under the Impoundment Control Act. In a letter dated March 28, 1990, the OMB Director informed Congress that the Administration no longer intended to withhold the funds included in these deferrals. Thereupon the funds became available for obligation, and a possible confrontation in the courts was avoided.

GAO is empowered to sue for release of funds withheld without authority by the Executive Branch.

VETO PROCEDURES IN THE STATES

The following is based on an appraisal of the line item veto prepared by the House Committee on the Budget.

Currently, some 43 States allow item vetoes in appropriations bills. Several States, including Indiana, Maine, Nevada, New Hampshire, Rhode Island and Vermont, authorize general vetoes of bills but do not authorize item vetoes. North Carolina does not permit its governor to veto any legislative bills.

Many States revised their constitutions after the Civil War to respond to the practice of adding legislative riders to appropriations measures and to provide their governors more power to fulfill State constitutional mandates for State budgets to be in balance.

State practices

Although most States have amended their constitutions to include line item power for their chief executive, the practices adopted vary widely.

In Alabama, for example, the governor may veto a major budget bill entirely or offer executive amendments, which may delete or add figures and language. In Illinois, the

governor has reduction veto power on a particular line item. The amount he or she may approve becomes law unless his or her veto is overridden by the State legislature. In Indiana, on the other hand, a court has ruled that the governor—in vetoing items—must veto a complete section and only in an appropriations bill.

Mechanisms differ

The mechanisms used by States also differ with respect to legislative language accompanying appropriations.

In Colorado, for example, the governor can veto accompanying language only if he or she deems it unconstitutional. In Illinois, the State constitution prohibits substantive language in an appropriations measure.

In Michigan, the governor may veto distinct items of appropriations. The rule has been that when a line item is vetoed, the language accompanying that line item is also vetoed. In Wisconsin, substantive program language contained in the budget bill can be item vetoed apart from appropriation figures.

Constitutional provisions

Constitutional provisions again differ widely from State to State, especially with regard to the manner in which executive vetoes may be overridden by the legislature.

The vetoes required in each house to pass appropriations and revenue bills or items over the governor's veto include: majority elected (e.g. Arkansas), three-fifths elected (Maryland), two-thirds present (Texas), and two-thirds elected (Mississippi).

State and Federal differences

There are certain areas of distinction between the Federal and State budgetary processes. The comparisons are cited by both proponents and opponents of the proposal to give the President line item veto authority.

Balanced budget. A balanced budget is required in 49 States. The 43 governors authorized to veto items in State bills all operate in this context. Since it is an accepted practice, the balanced budget concept is not a prominent issue in the States.

Although a balanced Federal budget is a sought-after goal, there have been times when the Federal budget has been used for purposes of impacting the national economy, a usage beyond the function of financing government operations. In addition, such items as national defense, for example, are Federal, not State, responsibilities.

GOVERNORS' ITEM VETO AUTHORITY OVER APPROPRIATIONS

State	Governor can veto amount	Governor can reduce amount	Governor can veto language	Votes needed in each house to override
Alabama	X		X	Majority elected.
Alaska	X	X		Two thirds elected [1].

GOVERNORS' ITEM VETO AUTHORITY OVER APPROPRIATIONS—Continued

State	Governor can veto amount	Governor can reduce amount	Governor can veto language	Votes needed in each house to override
Arizona	X			Do.
Arkansas	X			Majority elected.
California	X	X		Two- thirds elected.
Colorado	X		X	Do.
Connecticut	X			Do
Delaware	X			Three-fifths elected.
Florida	X		X	Two-thirds elected.
Georgia	X			Do.
Hawaii	X	X		Do.
Idaho	X			Do.
Illinois	X	X		Three-fifths elected [1].
Indiana				Majority elected.
Iowa	X		X	Two-thirds elected.
Kansas	X			Do.
Kentucky	X			Majority elected.
Louisiana	X		X	Two-thirds elected.
Maine				Two-thirds present.
Maryland	[2] X		X	Three-fifths elected.
Massachusetts	X	X	X	Two-thirds present.
Michigan	X		X	Two-thirds elected and serving.
Minnesota	X			Two-thirds elected.
Mississippi	X		X	Do.
Missouri	X	X		Do.
Montana	X		X	Two-thirds present.
Nebraska	[3] X			Three-fifths elected.
Nevada				Two-thirds elected.
New Hampshire				Do.
New Jersey	X	X		.
New Mexico	X			Two-thirds present.
New York	X			Two-thirds elected.
North Carolina	The Government has no veto power			
North Dakota	X	X	X	Do.
Ohio	X		X	Three-fifths elected.
Oklahoma	X			Two-thirds elected [4].
Oregon	X		X	Two-thirds present.
Pennsylvania	X	X		Two-thirds elected.
Rhode Island				Three-fifths present.
South Carolina	X		X	Two-thirds present.
South Dakota	X		X	Two-thirds elected.
Tennessee	X	X		Majority elected.
Texas	X			Two-thirds present.
Utah	X			Two-thirds elected.
Vermont				Two-thirds present.
Virginia	X		X	Two-thirds present [5].
Washington	X		X	Do.
West Virginia	X	X	X	Majority elected [4].
Wisconsin	X		X	Two-thirds present.
Wyoming	X			Two-thirds elected.

[1] Different number of votes required for revenue and appropriations bills. Alaska—¾ elected. Illinois—appropriations reductions, majority elected. Oklahoma—emergency bills, ¾ vote.

[2] Item veto on supplementary appropriations bill and capital construction bills only.

[3] No appropriation can be made in excess of the recommendations contained in the Governor's budget except by a ⅗ vote. The excess is not subject to veto by the Governor.

[4] Different number of votes required for revenue and appropriations bills. West Virginia—budget and supplemental appropriations, ⅔ elected.

[5] Must include majority of elected members.

Source: The Book of States 1988–89 by the Council of State Governments.

X. Minority Views of Senator Sasser

The Hollings proposal for a line-item veto conflicts with the separation of powers. Giving the President this line-item veto would yield additional fiscal powers to an already powerful Presidency. The line-item veto proposal would also threaten the Constitutional principle that the power of the purse—one of the few checks and balances [7] on the Presidency short of impeachment—is vested in the Congress.

The President already has considerable power over the budget process. He proposes the budget and he can focus national attention on the budget in a way that no legislature composed of 535 members can. The President exercises extensive power to defer expenditures. He can and does propose various rescissions which are sometimes agreed to by the Congress. Finally, the President retains his Constitutional power to veto appropriation bills—a power which can significantly shape the appropriations process.

The Constitution gives Congress the power to write laws. It gives the President the power to veto a bill in its entirety or to sign a bill in its entirety. With the enactment of this legislation, the President would be granted undue power to change the shape of appropriations legislation. The ability to strike sections of an appropriations bill is in effect a right to amend without check or balance. This is contrary to the separations of powers contained in Article I of the Constitution.

Therefore, I must strongly oppose the Hollings Legislative Line Item Veto Separate Enrollment Authority Act. For as the Federalist Papers [8] noted so well, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." [9]

XI. Changes in Existing Law

Pursuant to paragraph 12 of rule XXVI of the Standing Rules of the Senate, this committee finds no changes in existing law caused by the passage of this measure, the Legislative Line Item Veto.

---

[7] "Checks and balances represents a more positive way of protecting against tyranny: By requiring the cooperation of more than a single branch to take action, tyranny is harder to do." Eskridge's Consitutional Law Materials (I), Professor William Eskridge, Fall Term, 1990.

[8] The Federalist, The New York Packet, Friday, February 1, 1788, from Eskridge's Constitutional Law Materials (I), Professor William Eskridge, Fall Term, 1990.

[9] The Federalist, p. 7-4.

○